

The Honorable John H. Chun

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

AMAZON.COM, INC.,

Defendant.

No. 2:23-cv-00932-JHC

**DECLARATION OF JOHN D.
GRAUBERT IN SUPPORT OF
AMAZON.COM, INC.'S
OPPOSITION TO PLAINTIFF'S
MOTION TO DESEQUESTER
DOCUMENTS CLAWED BACK
BY DEFENDANT**

I, John D. Graubert, declare as follows:

1. I am an attorney at the law firm Covington & Burling LLP ("Covington"), counsel for Defendant Amazon.com, Inc. ("Amazon"). Unless otherwise noted, the matters set forth herein are true and correct to the best of my own knowledge and, if called as a witness, I could and would testify competently thereto.

2. I submit this declaration in support of Amazon's opposition to Plaintiff's Motion to Desequester. Nothing in this declaration is intended to or should be construed to constitute a waiver of Amazon's attorney-client privilege and work product protection asserted in its privilege logs as to the documents discussed therein.

DECLARATION OF JOHN D. GRAUBERT IN SUPPORT OF AMAZON.COM,
INC.'S OPPOSITION TO PLAINTIFF'S MOTION TO DESEQUESTER
DOCUMENTS CLAWED BACK BY DEFENDANT (2:23-cv-00932-JHC) - 1

1 3. The Federal Trade Commission (“FTC”) issued a Civil Investigative Demand
2 (“CID”) to Amazon on March 16, 2021 (“March CID”). The FTC issued a second CID to
3 Amazon on June 30, 2022 (“June CID”).

4 4. Amazon retained Consilio LLC (“Consilio”), an e-Discovery vendor, to host a
5 Relativity database for the review and production of documents responsive to the March CID
6 and the June CID.

7 5. Amazon, through counsel, implemented a thorough, multi-step review process.
8 Amazon’s attorneys reviewed documents to determine whether they were responsive to the
9 requests in the CIDs and whether they were privileged. Some documents were reviewed by
10 multiple attorneys.

11 6. The FTC also challenges claims of privilege that Amazon asserted with respect
12 to documents produced in other FTC investigations. I understand, based on discussions with
13 counsel in those matters, that the privilege review process in those matters was comparable to
14 that undertaken in response to the March CID and the June CID.

15 7. Amazon’s holistic approach to assessing privilege considered the contents of
16 each document, its corresponding family members, and other available content in assessing
17 privilege. Amazon did not rely on any single indicia of privilege, such as the inclusion of the
18 words “privileged and confidential,” to determine whether to withhold or redact a document.

19 8. In addition, at times, Amazon took additional investigative steps to determine
20 whether particular documents were privileged.

21 9. Amazon also took steps to assess whether documents responsive to the March
22 CID and the June CID were identical to documents that had previously been produced to the
23 FTC or withheld as privileged in certain other investigations.

24 10. In response to the March CID and June CID, Amazon produced approximately
25 30,000 documents. Of the approximately 30,000 documents that Amazon produced in the
26 investigation, thousands contained indicia of privilege. Despite having indicia of privilege,
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1 after further review, Amazon determined that many of those documents were not privileged and
2 produced them. Consilio determined that Amazon produced:

- 3 a. more than 1,700 documents that contained references to Amazon attorneys Praju
4 Tuladhar or Mark England;
5 b. more than 1,800 documents that contained the phrase “Privileged”; and
6 c. more than 1,300 documents that contained the phrase “P&C.”

7 I declare under penalty of perjury that the foregoing is true and accurate to the best of
8 my knowledge.

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10 DATED this 24 day of July, 2023.

11
12 By  _____

13 John D. Graubert
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